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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

POLAND

[22 March 1993]

GE.93-13886(EXT)

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PART I

Introduction

The first periodic report on the implementation by Poland of the provisions of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment covers the period since Poland's ratification of the Convention and its entry into force on 25 August 1989.

This period is characterized by the far-reaching changes in legislation made to create legal guarantees to ensure respect for the civil rights and political freedoms on which a State subject to the rule of law is based.

The work done along those lines has enabled Poland to ratify the Optional Protocol to the International Covenant on Civil and Political Rights and to make substantial progress towards ratifying the European Convention on Human Rights.

At the same time contacts have been maintained with non-governmental organizations such as Amnesty International and the Helsinki Federation of Human Rights and with interpol.

In this context, the incorporation and implementation of the provisions of the Convention constitute an essential factor in the process of transforming the legal system and its practical application. The details of this process are given hereunder.

Although the Polish legal system does not recognize the infliction of torture or other forms of cruel, inhuman or degrading treatment as an explicit offence, such behaviour is inadmissible under the provisions of the Penal Code which define the offences of causing bodily injury or disturbance of health (arts. 155 to 157 and 160) and offences against freedom of the individual (arts. 165 to 167), as well as, subsidiarily, the abuse of power by a public servant (art. 246). The Prison Regulations provide that supervision shall be exercised by the public prosecutor or the judge having jurisdiction over prisons in the case of maltreatment or inhuman or cruel treatment of persons who have been provisionally arrested or convicted (arts. 27 and 29). Under the Code sentences are to be served in a humane manner, with respect for the personal dignity of the prisoner (art. 7, para. 3).

The personal rights of arrested or convicted persons are set forth in the regulations, which were amended in 1990 with a view to improving the legal status of such persons.

Poland ratified the Convention on 9 June 1989. The ratification was not accompanied by any reservations, so that any dispute concerning the interpretation or application of the Convention must be referred to the International Court of Justice.

Ratification of the Convention commits the State to incorporate its provisions into domestic law, so that they can be invoked before the courts and administrative bodies. This possibility is regulated by the provisions of article 10 of the Code of Criminal Procedure, which imposes an obligation to inform participants in proceedings of their rights, and by the provisions of article 9 of the Code of Administrative Procedure, which imposes upon the organs

of the public administration an obligation to ensure that persons participating in proceedings do not suffer any harm arising from ignorance of the law and to provide them with the necessary information. The same stipulations are set forth in article 9 of the Code of Correctional Procedure.

The bodies competent to decide on matters falling under the Convention are, in the first place, the courts and the Public Prosecutor's Office as organs having a constitutional and legal duty to ensure that the law is enforced. This duty is also incumbent upon police organs responsible for protecting the health and lives of citizens, for detecting offences and for prosecuting their perpetrators. Decisions in matters falling under the Convention are also taken by the Ombudsman, who, in matters affecting the protection of the rights and freedoms of citizens, considers whether, following an act or omission by the State organs having an obligation to respect and realize such rights and freedoms, there has been a violation of the law. In order to enhance respect for the law, in 1990 the administrative correctional courts were transferred from the jurisdiction of the Ministry of the Interior to that of the Ministry of Justice. They are now established at district court level and all their decisions may be appealed to an independent court.

The principal remedies available to individuals complaining of torture or other forms of cruel, inhuman or degrading treatment allegedly inflicted upon them, the right to denounce offences to the Public Prosecutor's Office, the courts or the judge having jurisdiction over prisons, and the legal right to bring an action in respect of any behaviour violating the law are not subject to reservations. The action may be brought directly before the hierarchically superior organ, and any incorrectness or delay in considering it is subject to the liability laid down in the legal provisions in force.

In 1989, up to the time when the Convention was ratified, there were cases of unjustified arrests and the striking and wounding of citizens by officials of the police and security forces. Since then such cases have been observed only exceptionally, owing to the fact that more effective action can be taken against abuses committed by officials of the Ministry of the Interior and to the entry into force, on 1 October 1989, of the Act of 29 May 1989 under which complaints against detention may be made to the courts; such complaints must be considered immediately, and any irregularities found must be reported to the higher organs. However, immediately after the prison revolts that took place in December 1989, cases of the striking and wounding of prisoners by prison service officials were reported. They led to the bringing of criminal or disciplinary proceedings against 82 prison service officials, including two prison governors. Disciplinary proceedings against 30 officials have now been concluded and four persons have been dismissed.

PART II

Article 2

1. The Polish legal system and the rules governing the operation of the courts, the Public Prosecutor's Office, the police and administrative correctional tribunals and the prison system lay down conditions for the effective prevention of recourse to torture in the territory of the Republic of Poland.

2. As part of the process of implementing the Convention, the Police Act of 4 April 1990 (Official Gazette No. 40, pos.179) which lays down, inter alia, the disciplinary and criminal liability of policemen, has entered into force. Under the provisions of this Act, a policeman who, in the exercise of his functions, exceeds his competence and powers or fails to perform his duties, thereby violating the personal rights of a citizen, is liable to a term of imprisonment of up to five years.

3. If a policeman performs the act defined in this provision by violating the prohibition on passing information on a citizen obtained in the exercise of his functions to persons or institutions other than the court or Public Prosecutor and uses it against the citizen for a purpose other than the pursuit of justice, he is liable to a term of imprisonment of from one to five years (art. 142, paras. 1 and 2, of the aforementioned Act).

4. The Act provides for a penalty of from one to five years' imprisonment for a policeman who uses force or unlawful threats or moral maltreatment for the purpose of obtaining explanations, depositions or statements (art. 143 of the aforementioned Act).

5. The Act recognizes that a policeman who commits a forbidden act in the execution of an order or instruction does not commit an offence unless he is aware that by agreeing to execute the order or instruction he is committing an offence. In this case the person who gave the order or instruction is responsible for the offence (art. 144 of the aforementioned Act). The superior or commissioned police officer of higher rank who gives the policeman the order or instruction to perform the act constituting the offence is liable to a term of imprisonment of from one to five years. The same definition of the disciplinary and criminal liability of officials of the State Security Office is given in articles 125 to 128 of the State Security Office Act of 6 April 1990 (Official Gazette No. 30, pos. 180).

6. Under the current reform of the criminal law, many new institutions and arrangements are envisaged for further guaranteeing the proper implementation of the provisions of the Convention. In order to eliminate cruel or inhuman punishment the draft new Penal Code provides for the abolition of the death penalty and its replacement by a penalty of 25 years' rigorous imprisonment and, exceptionally, a penalty of life imprisonment for the most serious crimes such as genocide and murder. The draft also entails a general liberalization of penalties and the limitation of the threat and imposition of the penalty of rigorous imprisonment. The draft Code of Criminal Procedure provides for a more effective protection of the interests of accused persons, injured parties and witnesses, as well as for a more effective supervision of preparatory proceedings, which will no longer be conducted by the Public Prosecutor but by an independent court. The draft Penal Code tends to protect the rights of persons deprived of their freedom, in particular by

strengthening supervision by the judge having jurisdiction over prisons and by extending the scope of such supervision and its effective application. At the same time the draft envisages a limitation of the powers of the prison services during the serving of sentences and, in particular, during pre-trial detention.

Article 3

7. Pursuant to the rules laid down in chapter 56 of the Code of Criminal Procedure, in the case of an application for the extradition of a person sought by an organ of a foreign State for the purpose of instituting criminal proceedings against him or of making him serve the penalty imposed, the Public Prosecutor hears the person concerned and refers the case to the competent provincial court.

8. The provincial court gives, at a sitting, its opinion on the application made by the foreign State. Before it gives its opinion the person whose extradition is sought must have an opportunity of providing explanations, orally or in writing. The court transmits the file with its opinion to the Procurator-General of the Republic of Poland, who notifies his decision to the relevant organ of the foreign State.

9. If from the consideration of the application, particularly the opinion given by the provincial court in its capacity as an independent court, account being taken of the explanations provided by the person whose extradition is sought and of the decision taken by the Procurator-General, it is possible to deduce, on serious and acceptable grounds, that the person whose extradition is sought might be subjected to torture in the State requesting his extradition, the application will be rejected. The confirmed occurrence of regular cases of gross, flagrant and mass violations of human rights constitutes a very important element to be taken into consideration when such an application is considered.

Article 4

10. The provisions of the Convention have also led to the introduction, in the new draft Penal Code, of a category of offences consisting of the use of force by a public servant against another person for the purpose of obtaining depositions, explanations or statements. The proposed article 248 is broad in scope, since it covers the use of force, threats of the use of force or other forms of physical and mental maltreatment.

11. The provisions of article 249 protect a person lawfully deprived of his freedom against torture and relate to the liability of both public servants and fellow detainees. The draft protects a prisoner by establishing the liability of a public servant for tolerating the maltreatment of a person deprived of his freedom or subject to the supervision of the public servant.

12. The penalties imposed for this category of offences take into account their serious nature (art. 248 - imprisonment of from six months to eight years, art. 249 - imprisonment of from three months to five years).

Article 5

13. The 1969 Penal Code stipulates that Polish criminal law applies to the perpetrators of offences committed in the territory of Poland and on ships at sea or on aircraft (art. 3 of the Penal Code).

14. Polish criminal law applies to persons of Polish nationality who have committed an offence abroad (art. 113 of the Penal Code) and to persons of foreign nationality who have committed an offence abroad and liability for which depends upon the recognition of such an act as an offence by the law in force at the place where the act was committed (art. 114 of the Penal Code).

15. Apart from the provisions in force at the place where the offence was committed, Polish criminal law applies to persons of foreign nationality in the case of offences in respect of which criminal proceedings are instituted pursuant to international agreements (art. 115 of the Penal Code).

16. The new draft Penal Code provides that Polish criminal law applies to persons of foreign nationality who have committed abroad an offence against the property or interests of the Polish State, or an individual or corporation of Polish nationality.

Article 6

17. The Code of Criminal Procedure lays down the rules governing, inter alia, the initiation of criminal proceedings. Under these rules preparatory proceedings are initiated where there is a justified suspicion that an offence has been committed (art. 255 of the Code of Criminal Procedure).

18. In the case of the detention of a person charged with an offence, the duration thereof and the ground therefor must be stated in writing and notified to the person concerned, who must be informed of his right to complain to the court against his detention. At the request of the detained person, his next of kin or any other person designated by him or his employer or school must be advised. The detained person has the right to complain against the detention to the territorially competent district court. The court considers the complaint without delay. If the detention is groundless, the court orders the detained person's immediate release and notifies its decision to the organ exercising supervision over the organ which made the detention. In this case, the detained person is entitled to compensation for the damage suffered and to reparation from the State Treasury.

19. Preventive measures to ensure the regular conduct of the proceedings can be taken if the evidence assembled against the accused adequately proves that he committed the offence (art. 209 of the Code of Criminal Procedure).

20. The Public Prosecutor may order pre-trial detention for a period not exceeding three months, and a complaint against his decision may be lodged with the court. If the preparatory proceedings cannot be concluded within that period owing to the special circumstances of the case, the competent court may order an extension of the pre-trial detention for a period of one year. Any extension beyond that period may be ordered only by the Supreme Court, at the request of the Procurator-General, in exceptional and justified cases for a strictly defined period necessary for concluding the investigation. A complaint may be lodged against the court's decision to extend the pre-trial detention with the court of second instance.

21. Every case involving the pre-trial detention of a person of foreign nationality is notified immediately to the competent consulate of the country concerned or, failing that, to that country's diplomatic mission (art. 539 of the Code of Criminal Procedure). The new draft Code of

Criminal Procedure provides that pre-trial detention may be imposed only by a court decision.

Article 7

22. Under the principle in force in Polish criminal procedure, anybody who is aware of an offence in respect of which criminal proceedings must be initiated has a duty to inform the Public Prosecutor or the police.

23. Public and social institutions which, by the nature of their activities, are aware of an offence in respect of which criminal proceedings must be initiated have an obligation to inform immediately the Public Prosecutor or the police and to take immediate action, pending the arrival of the prosecuting organ or its decision regarding the relevant arrangements, to prevent the disappearance of the traces or evidence of the offence (art. 256 of the Code of Criminal Procedure).

24. The Public Prosecutor has an obligation to bring proceedings in the case of an offence in respect of which criminal proceedings must be initiated, and the police are subject to the same obligation (art. 5 of the Code of Criminal Procedure). The rules relating to judgements concerning offences covered by the Convention are the same as in the case of a serious common law offence. This principle also applies to the rules of penal procedure concerning substantive criminal law, including the rules relating to the amount of the penalty and the enforcement procedure. Anybody prosecuted for this category of offences enjoys full guarantees of fair treatment at all stages of the proceedings.

Article 8

25. Since the ratification of the Convention, Poland has entered into no new extradition agreements. The obligations and rules referred to in article 7 are observed by all public organs that consider applications for extradition.

Article 9

26. Assistance in all criminal proceedings concerned with the offences covered by the Convention is given pursuant to the rules laid down in chapter 54 of the Code of Criminal Procedure.

27. As part of judicial assistance, acts necessary for criminal proceedings may be carried out, including the notification of documents to persons residing abroad or to institutions having their headquarters abroad, the hearing of accused persons, witnesses or experts, investigations, searches of premises and persons, the seizure of objects and their delivery abroad, the summoning of persons residing abroad to appear in person and voluntarily before the courts or the Public Prosecutor with a view to their being heard as witnesses or in identification proceedings, as well as the production of prisoners and of files, documents and information on the police records of accused persons. The courts and public prosecutors may grant judicial assistance at the request of courts and public prosecutors of foreign countries.

28. A witness or expert of foreign nationality summoned from abroad who appears voluntarily before a court may not be prosecuted, held or detained in custody for an offence in respect of which criminal proceedings have been initiated or for an offence committed before the Polish frontier was crossed.

Neither may a sentence imposed for such an offence be enforced. Judicial assistance is provided under agreements for mutual judicial assistance made between States signatories to the Convention.

Article 10

29. Documentation and information on the prohibition of torture are included in the training programmes of civilian or military personnel of the judiciary and of other persons likely to take part in the supervision or examination of persons subjected to any form of arrest, detention or imprisonment or in the proceedings concerning them.

Article 11

30. The work done on reforming the Penal Code also relates to the Prison Regulations, which lay down the rules for the serving of terms of imprisonment. The purpose of the reform, the conception of which has been radically changed since September 1989, is to define a prisoner's status by an exact determination of the rights and obligations of complainants, while respecting the United Nations Standard Minimum Rules for the Treatment of Prisoners, the individualization of social rehabilitation methods and measures, particularly in the case of minors, women and the perpetrators of involuntary offences, the strengthening of the role of the courts and of judges having jurisdiction over prisons during the serving of the sentence, an attenuation of the effects of isolation, and an improvement of prisoner's living conditions.

31. Without waiting for the adoption of the new Prison Regulations, on 23 February 1990 the Diet approved the Prison Regulations Amendment Act. The amendments made by this Act place on a footing of equality periods of work completed by the prisoner and work done outside, guarantee the right to remuneration for work done and abolish the so-called "hard bed" penalty as a disciplinary measure. Prisoners now have the right to complain against decisions of the prison administration to the court having jurisdiction over prisons.

32. These matters were also taken up in the order of the Ministry of Justice dated 2 May 1989 on the rules for serving terms of imprisonment (Official Gazette No. 31, pos. 166), which entered into force on 1 October 1989. This order replaces the 1974 provisional rules for serving terms of imprisonment. The new rules attenuate the arrangements for the serving of sentences in the case of adolescents, women, persons sentenced for involuntary offences, prisoners suffering from psychological problems, prisoners who are mentally ill, alcoholics, drug addicts and physically handicapped prisoners.

33. The new regulations increase the remuneration paid to prisoners, introduce new rewards such as telephone conversations with close relatives and 24-hour passes for leave outside the prison, and limit the application of regulation penalties. The penalty of solitary walks and the limitation or deprivation of the right to correspondence have now been abolished. Food parcels are now considered to be an entitlement of the prisoner and no longer a privilege.

34. Persons held in pre-trial detention are subject to the provisions of the order of the Ministry of Justice dated 2 May 1989 on the rules governing pre-trial detention (Official Gazette No. 31, pos. 167), which entered into force on 1 October 1989. Based on the principle of the presumption of innocence, the only restrictions allowed on the rights of persons held in

pre-trial detention are those necessary for the maintenance of order and security in the place of detention and the protection of persons held in pre-trial detention against demoralization, as well as for guaranteeing the proper conduct of the criminal proceedings. A person held in pre-trial detention is entitled to possess, in his cell, objects of personal use and objects needed for the practice of his religion. The daily food supply is of at least 3,200 calories. A person held in pre-trial detention who is employed for remuneration receives 100 per cent of his wage. If he continues to be remunerated for his usual employment, he is entitled to only 50% of his wage for work done in the place of detention. He is entitled to his own clothing and footwear, may purchase foodstuffs and tobacco with the monies deposited, and may receive one food parcel of 5 kg per month. The regulations limit to an indispensable minimum the range of penalties that may be applied against a person in pre-trial detention for violating orders and prohibitions emanating from the regulations and from the arrangements in force in the place of detention.

35. Within the scope of their competence, judges having jurisdiction over prisons and public prosecutors supervise the serving of terms of imprisonment or pre-trial detention and the observation of the rights and obligations of prisoners. Up to December 1988, judges made 95 inspections; in 1987 they made 138. In 1987 supervision resulted in the cancellation or revision of 810 decisions of the prison commissions. Apart from inspections, judges having jurisdiction over prisons and public prosecutors interview prisoners with regard to their applications for release from prison on parole. Prisoners' complaints and applications are generally concerned with disciplinary penalties imposed, medical assistance, and working and equipment conditions. in 1987 the public prosecutors inspected 136 prisons, including 46 places of detention for prisoners awaiting trial; in 1988 they inspected 130 prisons, including 56 places of detention for prisoners awaiting trial.

36. Since 1 November 1956, prisons and places of detention for prisoners awaiting trial have been under the jurisdiction of the Ministry of Justice. Nevertheless, the Prison Regulations have allowed an exception by stipulating that, pending the creation of a sufficient number of places of detention for prisoners awaiting trial, the Public Prosecutor may order pre-trial detention, for a period not exceeding three months, on premises of the militia, the military frontier guards or the internal military services. In exceptional cases convicted prisoners serving a sentence of imprisonment may be detained on these premises pursuant to a decision by a judge having jurisdiction over prisons, for a period not exceeding six months.

37. It was found that this rule was not being respected, since the number of places of detention for prisoners awaiting trial under the jurisdiction of the Ministry of Justice was diminishing while the number of such places on militia premises was increasing. In mid-February 1989 the Ombudsman, in collaboration with deputies and his staff, inspected places of detention on militia premises in seven provinces. The inspection revealed the poor conditions obtaining there, the detention of three persons beyond 48 hours, and the priority given to the defensive functions of pre-trial detention. A detailed report with conclusions was transmitted to the Minister of the Interior and the Minister of Justice, among others. Implementation of all the conclusions of the report was supported by the Polish Committee on Human Rights in the communiqué which it sent to the Minister of Justice, the Minister of the Interior and the Procurator-General. Further to the report, on 4 August 1989 the

Procurator-General issued directives restricting the placing of prisoners awaiting trial in places of detention on militia premises in localities where there are places of detention under the jurisdiction of the Ministry of Justice.

38. The problem was finally resolved by the aforementioned Act of 23 February 1990 amending the Prison Regulations, which provides for the abolition of places of detention for prisoners awaiting trial on militia premises within three months from the date of the Act's entry into force.

39. Before September 1989 the supervision of prison activities by social workers and the participation of social organizations in the prison-sentence-serving process were still at the verbal declaration stage. Although the Minister of Justice's order of 2 May 1989 on the regulations for serving terms of imprisonment confirmed access to prisons and contemplated the participation of institutions and organizations whose statutory purpose is to provide assistance to prisoners and their families in the social rehabilitation process, social supervision was not very effective because access to prisons by independent persons was strictly controlled. Only after September 1989 were conditions conducive to the active participation of prisoners' aid organizations introduced. Among them we can mention the reactivated Employers' Prison Association.

Article 12

40. The speediness and impartiality of the organs responsible for making preliminary investigations are guaranteed by the system of deadlines prescribed for criminal proceedings and the rules on which such proceedings are based.

41. The Code of Criminal Procedure establishes in detail the length of detention, of pre-trial detention and of the preliminary proceedings and the deadlines for applying for remedies. The Public Prosecutor has an obligation to ensure that all preparatory proceedings are carried out in a regular and reliable manner. In the exercise of his supervision the Public Prosecutor may, inter alia, take cognizance of the intentions of the judge responsible for the criminal proceedings, give directions for the proceedings and issue orders relating thereto. The organs responsible for the criminal proceedings have an obligation to consider and take account of both attenuating and aggravating circumstances.

42. Judges reach their decisions on the basis of their well-founded conviction, the taking of evidence and their free opinion, taking into account their knowledge and experience.

43. A judge may be challenged under the law

(a) if the case concerns him directly;

(b) if he is the spouse of the party concerned, of the injured person or their defence counsel, attorney or legal representative;

(c) if he is related by blood or marriage in the direct line or in the collateral line between siblings of the persons designated in sub-paragraph (b) or if he is connected with one of those persons by adoption, guardianship or trusteeship;

(d) if he has been a witness to the event constituting the subject-matter of the case or, in the same case, he has been questioned as a witness or has participated as an expert;

(e) if he has participated in the case as a public prosecutor, defence counsel, attorney or legal representative of the party concerned or social representative or if he conducted the preparatory proceedings;

(f) if he participated in a lower court in the decision impugned or if he took the decision impugned;

(g) if he had participated in the taking of the rejected decision and the case referred for review.

44. The grounds for challenging a judge persist even if the marriage, adoption, guardianship or trusteeship no longer exist. A judge who participated in the taking of the decision in a case whose reopening has been requested or in respect of which an application for special review has been made may not decide on the request or review. A judge may also be challenged if, between him and one of the parties, there is a personal relationship likely to jeopardize the judge's impartiality. These rules also apply to assessors, public prosecutors and persons responsible for preparatory proceedings.

Article 13

45. Under the law in force, any person who states that he has been tortured in Polish territory has the right to complain to the competent authorities and to have his complaint promptly and impartially examined. This right is reflected in the unlimited possibility of denouncing the offence to the Public Prosecutor's Office, the courts or the judge having jurisdiction over prisons.

46. Any person also has the right to lodge an appeal relating to any behaviour constituting a violation of the law. The appeal may be lodged directly with the hierarchically superior organ, and any incorrectness or delay in examining it is subject to the liability provided for by law.

Article 14

47. The Polish legal system fully guarantees the right of a victim of torture to redress and to fair and adequate compensation.

48. Personal property and health, freedom and honour are protected by the civil law independently of any other protection provided for in other legal provisions. This protection is based on article 23 of the Civil Code.

49. A person whose personal property is threatened by the activities of another may call for the cessation of such activities. If a violation has been committed, he may also call upon the person who committed the violation to perform the acts needed to eliminate its effects and in particular to file a statement with the required contents and form.

50. If the violation of personal property gave rise to material damage, the injured party may call for redress under the general rules (art. 24 of

the Civil Code). The Code of Criminal Procedure also guarantees the rights of the injured party. The latter, as a person whose lawful property has been directly violated or threatened, by the offence, may secure his rights by intervening as a subsidiary or private accuser.

51. The injured party also has the right, pending the opening of the main hearing in the trial, to bring a civil action against the accused with a view to pursuing, in criminal proceedings, the material claims arising directly from the offence committed (art. 52 of the Code of Criminal Procedure). In the event of the death of the injured party, the civil action to secure the material claims arising from the offence committed may be brought against the accused by the spouse, the relatives in direct line or the siblings of the injured party, as well as by the adoptive parent and the adoptive child.

52. The Code of Criminal Procedure also contains provisions concerning compensation for unjust conviction, arrest or detention. An accused person who, following the reopening of the proceedings or a special review thereof, has been acquitted or convicted pursuant to a less severe provision, is entitled to compensation for the damage suffered and to amend for the loss arising from the total or partial execution of the penalty which he ought not to have incurred.

53. In the event of the death of the accused, the right to compensation devolves upon the person who, as a result of the execution of the clearly unlawful penalty or pre-trial detention, has lost the support which was due to him under the law or which had been permanently provided to him by the deceased person, if the grant of compensation is justified on valid grounds.

54. In the event of the death of an accused person who has, during his lifetime, applied for compensation, the right to claim compensation devolves upon the spouse, children and parents (art. 490 of the Code of Criminal Procedure).

Article 15

55. The Code of Criminal Procedure specifies the rules concerning the conduct of hearings in such a way as to ensure that the person being questioned has an opportunity to express himself freely within the limits established by the purpose of those proceedings; only subsequently may he be asked questions designed to supplement, elucidate or verify the depositions. The provisions of article 157 of the Code of Criminal Procedure implement directly the commitment entered into under the Convention, since they stipulate that explanations, depositions and statements made in circumstances in which it was impossible for the person concerned to express himself freely may not be regarded as evidence.

Article 16

56. The draft new Penal Code introduces, in the chapter dealing with offences against the administration of justice, a category of offences consisting of recourse to force by a public servant against another person for the purpose of obtaining depositions, explanations or statements. This provision (art. 248) provides that a public servant who, in order to obtain depositions, explanations or statements resorts to force or unlawful threats or who in any other way physically or mentally maltreats another person is liable to a term of imprisonment of from six months to eight years. A prisoner is similarly protected, since article 249, paragraph 1, stipulates that a person who physically or mentally maltreats a person lawfully deprived of his liberty is

liable to a term of imprisonment of from three months to five years. A public servant who does not oppose the maltreatment of a prisoner or a person subject to his supervision is liable to the same penalty.

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Initial reports of States parties due in 1990

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
DEPENDENT TERRITORIES*

[31 March 1993]

* The present document contains supplementary information submitted by the Government of the United Kingdom in respect of its dependent territories. The report of the United Kingdom's Dependent Territories (CAT/C/9/Add.10) was considered by the Committee against Torture on 18 November 1992 during its ninth session (see CAT/C/SR.132, 133 and 133/Add.2).

GE.93-13910 (E)

Supplementary Material submitted by the United Kingdom of Great Britain and Northern Ireland in respect of its Dependent Territories

During the consideration by the Committee against Torture, on 18 November 1992, of the initial report by the United Kingdom in respect of its dependent territories (CAT/C/9/Add.10), the representative of the United Kingdom undertook to submit to the Committee, in writing, further information to supplement or confirm or qualify, as the case might be, the information which he had already been able to provide orally in response to certain questions which the Committee had raised (see CAT/C/SR 132, 133 and 133/Add.2).

That further information is now set out below.

A. Segregation of unconvicted and convicted prisoners

(1) Anguilla
There is no provision requiring such segregation.

(2) Montserrat
The Prison Rules require unconvicted prisoners to be confined in such part of the prison as may be set aside for them and, as far as the circumstances allow, to be kept entirely separate from other prisoners. This is achieved in the case of female prisoners but, because of limited facilities, it is not wholly possible in the case of male prisoners. However, it is hoped that when a new prison is built full segregation will be possible in all cases.

(3) Turks and Caicos Islands
There is no provision requiring such segregation.

(4) St. Helena
The Gaol Rules require such segregation to be observed so far as practicable but the size of the prison and its restricted facilities would not permit complete segregation in practice. However, it is very rare for St. Helena to have unconvicted prisoners. When that does happen, they never share cells with convicted prisoners but may, on occasion, share meals.

(5) Pitcairn
There is no provision requiring such segregation but if there ever were a case of an accused person being remanded in custody - this is extremely unlikely:

see the initial written report in respect of Pitcairn (CAT/C/9/Add.10, at pp.30-35, and in particular paragraph 7 at p.35) - he or she would in practice be detained separately from any convicted prisoner.

(6) Cayman Islands
The Prison regulations require such segregation so far as practicable. Unconvicted prisoners are held in dormitory accommodation separate from convicted prisoners but there are insufficient resources to ensure full segregation at all times and the two classes mix during mealtimes and for normal exercise and association.

(7) British Virgin Islands
The Prison Rules require such segregation and this requirement is generally observed. However, there have been occasions, when the prison has been full, when it has been necessary to place unconvicted prisoners together with convicted prisoners. This has been permitted only for as short a period as possible.

(8) Gibraltar
The Prison Ordinance does require such segregation so far as accommodation in the prison renders it practicable. This requirement is generally observed but shortage of accommodation sometimes prevents full compliance with it.

(9) Falkland Islands
The Prison Ordinance does require such segregation so far as accommodation in the prison renders it practicable. But it is in fact very unusual in the Falkland Islands for accused persons to be held in custody pending trial.

B. Possibility of civil proceedings against the Government in respect of wrongs committed by officials

(1) Anguilla
It is confirmed that Anguilla has a Crown Proceedings Ordinance.

(2) Montserrat
It is confirmed that Montserrat has a Crown Proceedings Ordinance.

(3) Turks and Caicos Islands
It is confirmed that the Turks and Caicos Islands have a Crown Proceedings Ordinance.

(4) St. Helena
Until recently it was believed that the Crown

Proceedings Act 1947 of the United Kingdom had effect automatically as part of the law of St. Helena. However, the Supreme Court ruled last year that this was not so. A draft Crown Proceedings Ordinance, on the same lines as the Act, has accordingly now been prepared and it is hoped that it will be enacted at the next session of the Legislative Council. In the meantime the Executive Council has instructed the Attorney General to deal with all claims on an ex gratia basis as if the Act applied.

(5) Pitcairn
The Crown Proceedings Act of 1947 of the United Kingdom has effect as part of the law of Pitcairn.

(6) Cayman Islands
It is confirmed that the Cayman Islands have a Crown Proceedings Law.

(7) British Virgin Islands
It is confirmed that the British Virgin Islands has a Crown Proceedings Act.

(8) Gibraltar
It is confirmed that Gibraltar has a Crown Proceedings Ordinance.

(9) Falkland Islands
The crown Proceedings Act 1947 has by local law been applied to the Falkland Islands with such modifications as to enable the Falkland Islands Government and any of its officials or any employee of the Government acting in his official capacity to be sued in the Falkland Islands' Courts in every case in which a private individual could be sued.

C. Criminal Injuries Compensation Schemes

(1) Anguilla
There is no such scheme.

(2) Montserrat
There is no such scheme.

(3) Turks and Caicos Islands
There is no such scheme.

(4) St. Helena
There is no such scheme but the Annual Estimates (ie the provision made each year for Government expenditure in the following year) include a "General Compensation" head under which ex gratia payments may be made in appropriate circumstances.

(5) Pitcairn
There is no such scheme.

(6) Cayman Islands
There is no such scheme.

(7) British Virgin Islands
There is no such scheme.

(8) Gibraltar
There is no such scheme having general application. However there is special provision for the payment of compensation out of public funds to a person (or to his widow or children) who has been injured or killed in the course of trying to effect the arrest of another person who is charged with an indictable offence (ie an offence triable by the Supreme Court.)

(9) Falkland Island Islands
There is no such scheme.

D. Incidence of cases of torture: extradition of alleged torturers

It is confirmed that there have been no cases in any of the territories, since the Convention came into force in respect of them, in which a person has been convicted of the offence of torture or of an offence which could have been charged as torture or in which a person has been extradited (or his extradition has been sought) for the offence of torture.

E. Criminal Legal Aid

(1) Anguilla
There is no statute-based or other formal scheme for legal aid in criminal cases. But legal aid is in practice made available in very serious cases, eg murder, in the form of legal representation for the accused,

(2) Montserrat
There is no statute-based or other formal scheme for legal aid in criminal cases. But if an accused person before the High Court is unrepresented because of his lack of means, the Judge will appoint a lawyer to defend him. The lawyer's fees will be paid out of the funds of the Government Legal Department.

(3) Turks and Caicos Islands
There is no statute-based scheme for legal aid in criminal cases. But there are non-statutory arrangements, applicable only to cases involving a charge of murder, under which an accused person who would otherwise be unrepresented is afforded the services of a practising attorney-at-law both in the trial court (the Supreme Court) and on appeal to the Court of Appeal.

(4) St. Helena

The Attorney General is the only qualified lawyer in St. Helena and there is therfore no scope for a full legal aid scheme. But advice and representation is provided by formally recognised lay advocates in accordance with the provisions of the Lay Advocates and Legal Assistance Ordinance 1986 and advice can also be sought from the Legal and Lands Department which provides legal services to the public (at no charge) as well as to the Government. In appropriate cases the Legal Assistance Fund may be used to pay for the advice of a United Kingdom lawyer. In the most serious criminal case to have occurred in St. Helena in recent years (which involved foreign nationals) funds were made available by the United Kingdom Government to pay for full representation by English lawyers, including representation in proceedings before the Court of Appeal.

(5) Pitcairn

There is no statute-based or other formal scheme. But if a person who was charged with a serious criminal offence lacked the necessary means, public funds would be made available to ensure that he was represented by competent and experienced counsel (who would of course have to come from outside Pitcairn.)

(6) Cayman Islands

The Poor Persons (Legal Aid) Law (1975) makes provision for a person who is charged with a serious crime to have the services of a legal practitioner to advise or represent him if he satisfies the court that he does not have the means to instruct a practitioner himself.

(7) British Virgin Islands

There is no statute-based or other formal scheme. But before capital punishment was abolished it was the practice, in cases where the accused was charged with a capital offence and was unrepresented, for the Judge to require that a lawyer be made available to him. This was done at public expense.

(8) Gibraltar

Under the Legal Aid and Assistance Ordinance free legal aid (eligibility for which is means-related) is provided by local barristers and solicitors in the following cases: where as person is committed for trial for an indictable offence (ie trial by the Supreme Court), and on appeal to the Court of Appeal in such a case; and where a person faces summary trial for an offence for which a sentence of imprisonment may be imposed, and on appeal to the Supreme Court in such a case.

(9) Falkland Islands

There is no statute-based scheme but there is a comprehensive non-statutory scheme. Under the current arrangements - the scheme runs from one financial year to the next - legal aid is available to cover the cost of legal practitioners undertaking work on behalf of clients in a range of legal proceedings. These include all criminal proceedings other than for road traffic offences. This assistance (eligibility for which is means-related)is available to all residents of the Falkland Island. Any other person present in the Falkland Islands may be granted assistance under the scheme if the criminal court certifies that he needs legal representation, advice or assistance and that his means are such that he cannot reasonably be expected to finance his own legal costs.

F. Police Complaints Procedure

(1) Anguilla

There are no formal arrangements, statutory or otherwise, for dealing with complaints by members of the public against the police. But any such complaint would of course be properly investigated. If the investigation revealed misconduct by a police officer, then, depending on the facts, consideration would be given to the institution of criminal proceedings or the case would be handled as a disciplinary matter within the police force.

(2) Montserrat

There is no statutory provision on this matter but there is a set procedure within the Montserrat police force for dealing with such complaints. This procedure is as follows:-

(a) When a complaint against a police officer is received from a member of the public, the Deputy Commissioner of Police must initiate an investigation by another police officer, of the rank of Inspector or above.

(b) The investigating officer must then obtain a statement from the complainant and carry out a full investigation. This will include taking statements from witnesses, after which the police officer who is the subject of the complaint will himself be interviewed about it.

(c) The investigating officer must then submit a completed file, with his recommendations, to the Deputy Commissioner of Police.

(d) If the file discloses a possible criminal offence

or indicates that the police officer who is the subject of the complaint may have committed a disciplinary offence which might lead to his dismissal or suspension from duty, the file will be submitted to the Attorney General for advice.

(e) If the Attorney General decides to charge the police officer concerned with a criminal offence, the case will then be pursued before the ordinary criminal courts.

(f) If the decision is to institute disciplinary proceedings, these will be pursued in accordance with the Police Ordinance.

(g) The Commissioner of Police himself must see and finalise the file in every case.

(h) The complainant must be notified of the result of the investigation into his complaint.

(i) A record must be kept of all complaints against the police.

(3) Turks and Caicos Islands

There is no statutory provision on this matter but the Turks and Caicos Islands Police Standing Orders prescrib the procedure to be observed in dealing with complaints by a member of the public against a police officer. This procedure is as follows:

(a) Any written letter of complaint must at once be referred to the Deputy Commissioner. If it is received elsewhere than at Police Headquarters, it must at once be sent there by hand for his attention. The Deputy Commissioner will then order the necessary further action, record the complaint in the Complaints Register and send a written acknowledgment to the complainant.

(b) If a complaint is made otherwise than in writing (eg personally at a police station), it must be dealt with by an officer of the rank of Inspector or above. He will then invite the compainant to make a written statement on a proper statement form. He will also take any necessary immediate action (eg to procure a medical examination or to prevent the complaint being aggravated.) He will then forward the statement, together with any comments of his own, to the Assistant Superintendent of the Division who in turn will refer the case to the Deputy Commissioner.

(c) For the purpose of investigating a complaint, the Deputy Commissioner is required to appoint an officer of the rank of Inspector or above. This investigating officer will follow the same general procedures as in a criminal case. Written statements on statement forms will be taken from all potential witnesses. Any material documents will be taken into the investigating officer's custody as potential exhibits in the proceedings which may follow.

(d) When all witness statements have been taken, the officer who is the subject of the complaint will himself be interviewed. This must be done in the presence of a sergeant who will make a note of the interview. If the complaint involves an allegation of a criminal offence, the proper procedure for handling such an interview (eg the giving of a caution in accordance with the Judges' Rules) must be observed; in other cases it will be the procedure for handling disciplinary matters. If the complaint is against more than one officer, they must each be interviewed separately and all necessary steps taken to prevent collusion. If the interview indicates the existence of further witnesses, statements will then be taken from them also.

(e) When all enquiries are complete, the investigating officer must submit to the Assistant Superintendent the statements, any exhibits and his own report and recommendations. After consultation with the Deputy Commissioner, the Assistant Superintendent will then initiate action as follows:

(i) If no misconduct has been revealed, the papers will be forwarded to the Deputy Commissioner for registration and reply to the complainant.

(ii) If the investigation has revealed a possible disciplinary offence but not a criminal offence, the papers will be forwarded to the Deputy Commissioner for his decision whether disciplinary proceedings should be taken and, if so, whether the case should be heard by the Commissioner himself or by a Superintendent.

(iii) If the investigation has revealed a possible criminal offence, the papers will be forwarded to the Deputy Commissioner for him to submit them to the Attorney General. If the

Attorney General advises that criminal proceedings should be instituted, they will be then be pursued before the ordinary criminal courts.

(f) If, in a case which is being handled as described in paragraph (e)(ii) or paragraph (e)(iii) above, there is substantial delay in finalising it, the Deputy Commissioner is required to keep the complainant advised of its progress. The complainant will also be advised, in writing, of the final outcome.

(4) St. Helena

There is no statutory provision on this matter. But police affairs are a special responsibility of the Governor. If a complaint is made against the police, the Governor may appoint a Commission of Enquiry to investigate the matter and advise him. This has been done in the past. A complainant who is dissatisfied with the Governor's decision may petition the Secretary of State for Foreign and Commonwealth Affairs (ie the responsible United Kingdom Minister).

(5) Pitcairn

Given the circumstances of Pitcairn, there is no need (and no scope) for any formal arrangements on this matter. But if there ever were to be any complaint of any kind against a police officer, it would of course be properly investigated.

(6) Cayman Islands

There is no statutory provision on this matter, but the Committee's attention is drawn to paragraph 32 of the initial written report in respect of the Cayman Islands (CAT/C/9/Add.10, at p.44). Where the investigation of a complaint revealed misconduct by a police officer, the matter would be pursued, as appropriate, either by way of criminal proceedings or as a disciplinary matter within the police force.

(7) British Virgin Islands

There are no statutory or other formal arrangements on this matter. But any complaint by a member of the public against the police would of course be properly investigated. The investigation would be conducted by a police officer and, unless it led to criminal procedings being instituted, any misconduct by a police offeicer which it revealed would be dealt with as a disciplinary matter within the police force.

(8) Gibraltar

As explained in the initial written report in respect of Gibraltar (CAT/C/9/Add.10, paragraph 29 at p.57), a complaint by a member of the public against the police

is subject to investigation by the Police Complaints Board. This Board is established under the Police (Discipline) Regulations 1991 and consists of the Commissioner, two other police officers not below the rank of Chief Inspector and two independent members appointed by the Governor, together with a Secretary who is also appointed by the Governor. Where an investigation reveals conduct by a police officer which may amount to a disciplinary or criminal offence, the matter is referred to the Commissioner or the Attorney General, as the case may require, for the institution of disciplinary or criminal proceedings to be considered. The Regulations require the complainant, as well as the police officer who is the subject of the complaint, to be kept duly informed.

(9) Falkland Islands

Under the provisions of the Police Ordinance 1967, complaints against members of the police force are to be investigated without delay by the Chief Police Officer. In practice the Chief Police Officer submits the results of his investigation to the Police Advisory Committee, which is an independent committee whose members are appointed by the Governor.

G. Judicial corporal punishment

As reported orally to the Committee at the hearing on 18 November 1992, corporal punishment may be imposed by order of a court, on conviction of a criminal offence, only in the territories and in the circumstances indicated below. As will be seen, in most of the cases in question, though the enabling provision remains on the statute-book, it is not currently implemented in practice. The respective details, as requested by the Committee and so far as applicable in practice, are as follows:-

(1) Anguilla

A sentence of flogging (ie with a "cat o' nine tails") or whipping (ie with a cane) may be passed on an adult for any of the following offences: defilement of a girl under 12 years of age; robbery; demanding money, etc. with menaces; shooting or wounding with intent; attempting to choke in order to commit any offence; causing bodily injury by an explosive substance; causing explosive substance to explode or sending an explosive substance to any person; rape.

A sentence of whipping (only) may be passed on a juvenile for any offence.

The only recent exercise by a court of the power to order corporal punishment occurred in April 1992 when four boys (two aged 12 years, one aged 10 years and one aged 8 years) were found guilty of stealing a sum

of money from a person. The magistrate orderd all four boys to observe a curfew (to be home by 7.00 pm.) for one year, one boy also to be put on probation for two years and all four boys also to receive four strokes of the cane.

(2) Turks and Caicos Islands

There is a provision in the Young Offenders Punishment Ordinance (which was enacted in 1909 and is still in force) which authorises male offenders up to the age of 16 years to be sentenced to be whipped if convicted of an offence punishable with imprisonment. However - and this represents a correction of the information given orally to the Committee at the hearing on 18 November 1993 - this provision, though it has not been repealed, is regarded as an anomalous relic and the power which it confers is not, in practice, currently in use.

(3) Cayman Islands

As reported at the hearing on 18 November 1993, though the law of the Cayman Islands theoretically permits a convicted prisoner to be sentenced, by a court, to corporal punishment for certain offences against prison discipline, this power has not in practice been exercised in recent years and is effectively in abeyance.

(4) British Virgin Islands

A sentence of flogging or whipping may, in law, be passed on an adult prisoner for the following prison offences: mutiny; incitement to mutiny; gross personal violence to a prison officer.

A sentence of whipping may be passed on a juvenile for any offence.

In practice, however, no person in the British Virgin Islands has been sentenced by a court to corporal punishment of any kind since 1985.